

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**COMPLAINT**

NOW COMES the Plaintiff, FLATS CHICAGO LLC, an Illinois limited liability company (“Flats”) by and through its attorneys, Jayaram Law Group Ltd., and in support of its Complaint against Defendant THREE CORNERS DEVELOPMENT, INC. (“TCD”) states as follows:

## The Parties

1. Flats Chicago LLC (“Flats”) is an Illinois limited liability company with its principal place of business in Chicago, Illinois.
2. Three Corners Development, Inc. (“TCD”) is an Illinois corporation with its principal place of business in Orland Park, Illinois.

## **Jurisdiction & Venue**

3. This court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331 in that this action involves questions of federal law pursuant to 28 U.S.C. §§ 1338(a) and 1338(b) involving federal claims for trademark infringement, unfair competition and false designation of origin.

4. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337(a).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(1) and (2) since TCD resides in this District and a substantial part of the events giving rise to the claims occurred in this District.

### **Factual Background**

6. In or about June 2012, Flats began using the trademark FLATS in connection with real estate development services. Flats has been using the trademark FLATS continuously in interstate commerce as a source identifier since its date of first use.

7. Flats' has been developing real estate properties primarily in the Uptown neighborhood of Chicago since 2012. Flats' mission is to bring big style in smart spaces by delivering high quality, amenity rich, and authentic environments at approachable rents. Residents, media outlets, and others associate Flats with the Uptown and surrounding neighborhoods of Chicago, and Flats continues to be a growing mainstay in those north side neighborhoods.

8. Flats' real estate properties in Chicago bearing the Flats Marks trademark include: 4875 N. Magnolia, 1020 W. Lawrence, , 1325 Wilson, 5718 N. Winthrop, 5411 N. Winthrop, 5051 N. Kenmore, 4875 N. Magnolia, and 6134 N. Kenmore.

9. Flats is the owner of federal trademark registration number 4531027 for FLATS



and federal trademark registration number 4593546 for the Flat's design mark:

and has a pending application for federal trademark serial number 86425916 for FLATS (collectively, the "Flats Marks").

10. FLATS and the Flats Marks have acquired secondary meaning since their respective first uses in 2012.

11. Flats is well-known for purchasing neglected buildings, renovating them and converting them into affordable mixed-used properties.

12. As demonstrated in greater detail in over 140 press mentions annexed hereto as Exhibit B, Flats has received national acclaim for years, as reflected in media outlets such as Bloomberg, Bravo TV, Crain's Business, Chicago Sun-Times, Chicago Home & Garden, and Renovation Style. Co-branding synergies with national retailers such as CB2 (Crate and Barrel) and others have further propagated the Flats brand, particularly the FLATS trademark. By offering a visible, packaged, and consistently high quality rental unit and a professionally managed building regardless of which Flats product they live in.

13. In addition, Jay Michael, the principal of Flats, had his own television show on Bravo in which he promoted the Flats Marks on a national basis to a national television audience.

14. Since 2012, Flats has spent nearly \$600,000.00 in advertising, promoting and marketing and using the FLATS trademark and/or the Flats Marks in Chicago and around the country. As a result, FLATS and the Flats Marks are a well-known, trusted, and highly-recognizable property development brand.

15. On or about April 1, 2015 Flats learned via an article published by DNAinfo Chicago, a local news source, that TCD is developing a property in the Edgewater neighborhood of Chicago branded "The Flats on Devon". The Edgewater neighborhood borders the Uptown neighborhood where Flats has been using its marks and operating similar properties for years. A copy of the article titled "Could Flats on Devon 'Luxury' Development Transform Depressed

Strip?” is attached and incorporated as Exhibit A. TCD uses the Flats Mark without consent, license, or authority as a trademark in connection with its real estate project.

16. The article also included a photo of the current construction site with a sign bearing TCD’s The Flats mark that looks strikingly similar to Flats’ design mark and the Flats Marks.

17. According to the article published on April 1, 2015, TCD was scheduled to begin construction of The Flats on Devon on or about April 14, 2015 and is scheduled to finish the three-story buildings – at 1244 and 1301 W. Devon Ave. and 6539 N. Wayne Ave. – in October of 2015. TCD’s properties bearing the infringing uses of the Flats Marks are located approximately one mile from the Flats properties (and, in some cases, less than a mile).

18. Following the publishing of this article, Flats began receiving phone calls from confused individuals and consumers looking for information about “its new project” on Devon, mistakenly and confusingly believing that Flats was the developer of the Devon property (rather than TCD, the real developer).

19. TCD’s use of the Flats Marks for its new project on Devon infringes upon Flats’ federally registered marks and common law marks because, among other things, the marks are nearly identical, used in the same or similar channels of trade and are likely to cause (and, in some cases, have caused) consumer confusion.

20. TCD’s use of the mark The Flats is, upon information and belief, in bad faith with intent to profit and trade off the good-will of the FLATS trademark.

21. TCD is using the mark The Flats while conducting trade or commerce to derive an economic benefit for itself.

**FIRST CLAIM FOR RELIEF**  
**(Trademark Infringement 15 U.S.C. §1114(1))**

22. Flats incorporates and re-alleges paragraphs 1-21 as though fully stated herein.
23. TCD's current and planned future use of the mark The Flats in connection with its real estate development project is likely to cause confusion, mistake, or to deceive as to the affiliation, connection or association of TCD with Flats, or as to the origin, sponsorship, or approval of TCD's products and services.
24. Upon information and belief, TCD's unauthorized use of the FLATS trademark and the complained-of acts herein is willful and knowing and done with the intention of trading upon the valuable goodwill of Flats' trademarks.

25. TCD's current and planned use of the mark The Flats jeopardizes the goodwill of the Flats Marks (both registered and common law rights), and causes serious and irreparable injury to the FLATS brand and will continue to cause such harm, damage and injury to Flats unless TCD's use of the Flats Marks is preliminarily and permanently enjoined.

**SECOND CLAIM FOR RELIEF**  
**(False Designation of Origin, 15 U.S.C. §1125 (a))**

26. Flats incorporates and re-alleges paragraphs 1-25 as though fully stated herein.
27. TCD's use of the mark The Flats for its real estate development project is likely to cause confusion, mistake, or to deceive as to the affiliation, connection or association of TCD with Flats, or as to the origin, sponsorship or approval of TCD's goods and services or commercial activity in violation of Flats' rights within the meaning of 15 U.S.C. § 1125(a).
28. TCD's use of the mark The Flats constitutes a false or misleading description or representation in violation of §43(a) of the Lanham Act.

29. Upon information and belief, TCD's unauthorized use of one or more of the Flats Marks and the complained-of acts herein is willful and knowing and done with the intention of trading upon the valuable goodwill built up in the Flats' trademarks and brand, or otherwise injuring Flats.

30. TCD's current and planned use of the mark The Flats has caused irreparable harm, damage and injury to Flats and will continue to cause such harm, damage and injury to Flats unless TCD's use of the Flats Marks is preliminarily and permanently enjoined.

**THIRD CLAIM FOR RELIEF**  
**(Violation of the Illinois Uniform Deceptive Trade Practices Act – 815 ILCS § 505)**

31. Flats incorporates and re-allages paragraphs 1-30 as though fully stated herein.

32. TCD's current and planned use of the mark The Flats constitutes unfair or deceptive acts or practices within the meaning of 815 ILCS § 510/1 et seq.

33. TCD's current and planned use of the mark The Flats in connection with its real estate development project causes likelihood of confusion of or misunderstanding as to its affiliation, connection, or association with Flats.

34. TCD's actions disparage and the goods, services and business of Flats by making false or misleading factual representations.

35. Upon information and belief, TCD has willfully engaged in the unlawful acts described herein with wanton, reckless and in total disregard for Flats' rights. of trademark infringement and unfair competition.

36. Such actions constitute a violation of 815 ILCS 510/2, and Flats is entitled to damages for the same.

**FOURTH CLAIM FOR RELIEF**  
**Common Law Unfair Competition**

37. Flats incorporates and re-alleges paragraphs 1-36 as though fully stated herein.
38. Upon information and belief, TCD knowingly used and is directly benefitting from the current and planned use of the mark The Flats.
39. TCD's current and planned use of The Flats is "in commerce" within the meaning ascribed by Illinois common law and federal trademark law.
40. TCD's current and planned use of The Flats is likely to cause confusion, or to cause mistake, or to deceive consumers.
41. Upon information and belief, TCD's acts are willful and knowing.
42. TCD's current and planned use of the mark The Flats has caused irreparable harm, damage and injury to Flats and will continue to cause such harm, damage and injury to Flats unless TCD's use of The Flats is preliminarily and permanently enjoined.

**PRAYER FOR RELIEF**

WHEREFORE, Flats Chicago LLC requests that this Court enter judgment in its favor and against Three Corners Development Inc. on all four Counts alleged herein and that this Court:

- a. Find that TCD committed acts of infringement of Flats' trademarks, including one or more of the Flats Marks;
- b. Find that TCD engaged in unfair competition detrimental to Flats in violation of 15 U.S.C. §1125(a)
- c. Enter judgment against TCD and in favor of Flats on all applicable counts;
- d. Find the acts of TCD were willful and knowing and for profit;
- e. Award to Flats statutory damages per trademark infringed;

- f. Award to Flats treble, punitive, or otherwise enhanced damages and attorneys fees, as available, for acts of willful infringement;
- g. Preliminary and permanently enjoin TCD and its employees, agents and servants, and any person in active concert with them from using the mark The Flats and any other trademark, service mark, trade name or domain name which is confusingly similar to FLATS and/or any of the Flats Marks; and
- h. Award to Flats its costs and attorneys' fees to the extent not awarded above; and
- i. Grant Flats such other and further relief as justice may require.

Respectfully Submitted,  
/s/ Vivek Jayaram, Esq.

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